

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2003-16
)	
LONA KAUI,)	ORDER NO. 83
)	
Complainant,)	ORDER DISMISSING APPEAL FOR
)	LACK OF PROSECUTION
vs.)	
)	
HAWAII TRAN-ZIT SERVICES, INC.,)	
)	
Respondent,)	
)	
and)	
)	
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	
)	
Appellee.)	
)	

ORDER DISMISSING APPEAL FOR LACK OF PROSECUTION

This Occupational Safety and Health case comes before the Hawaii Labor Relations Board (Board) pursuant to a written notice of appeal from a finding of no discrimination by the DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Director), on a complaint by LONA KAUI (KAUI) against HAWAII TRAN-ZIT SERVICES, INC. (EMPLOYER).

On December 16, 2003, the Board convened an Order to Show Cause hearing by conference call in the above-captioned matter pursuant to Order No. 82, issued November 9, 2003. Complainant KAUI and counsel for EMPLOYER appeared by telephone and counsel for Director appeared inat the Board's hearing room for the hearing. At the hearing KAUI alleged that she was busy at her job and had forgotten about the hearing, adding that since the hearing was set in September she should have been reminded of the hearing by the Board.

Based upon the record, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. By letter dated July 8, 2003, the Director notified KAUI that after a reinvestigation of her allegation of discrimination, “. . . HIOSH could not conclude that you were discriminated by Hawaii Tran-Zit Services, Inc. when you were asked on September 13, 2002, to take a skills and/or field test before returning to work on County of Hawaii projects.”
2. By letter dated July 14, KAUI appealed the decision.
3. On August 1, 2003, the Board received the appeal from HIOSH.
4. On September 10, 2003, the Board held an initial conference in this case. As a result of the initial conference, the Board issued Order No. 67, Pretrial Order, dated September 12, 2003. The Pretrial Order set the date of hearing as December 8, 2003 at 9:30 a.m.
5. On December 8, 2003 at 9:30 a.m., the Board convened the hearing in its hearing room. Counsels for Director and EMPLOYER, respectively, were present. KAUI was not present and could not be contacted at her telephone number on file with the Board. Whereby, counsel for EMPLOYER orally moved to dismiss the complaint and for the award of attorney's fees and costs.
6. On December 9, 2003, by Order No. 82, the Board issued an Order to Show Cause; and Notice of Hearing ordering KAUI to participate in a hearing by telephone on December 16, 2003 at 9:30 a.m. to show cause and explain why this case should not be dismissed, with prejudice, for lack of prosecution. The Board further ordered if KAUI failed to appear and/or establish good cause, the Board would dismiss the complaint for lack of prosecution.
7. On December 16, 2003, the Board held a hearing on the Order to Show Cause. KAUI appeared by telephone, as did counsel for EMPLOYER. Counsel for Director appeared in the Board's hearing room. At the hearing KAUI alleged that she had forgotten about the hearing because she was busy at her job. She further stated that she was not in an area where she could be reached on her cellular telephone. She further added that the Board should have reminded her of the scheduled hearing as it was set several months after she was notified of the hearing date by the Board's Pretrial Order.

DISCUSSION

KAUI contended that the Board should have reminded her of the scheduled hearing since it had been noticed several months earlier. The Board, after written notice upon the parties, however, need not remind the parties of deadlines or the schedule for trial. The parties are responsible to meet the obligations as scheduled. Both counsel for the Director and counsel and representative of the EMPLOYER, at their own expense attended the hearing and were ready to proceed. Further, KAUI had the initial burden of proof that the alleged acts of EMPLOYER constituted discrimination under the HIOSH law. The Board thus finds that KAUI failed to establish good cause to warrant the Board proceeding with the appeal.

The Board, however, denies the EMPLOYER's request for attorney's fees and costs.

CONCLUSIONS OF LAW

Based upon KAUI's failure to appear at the hearing on December 8, 2003, and failure to establish good cause at the Show Cause hearing on December 16, 2003, the Board determines that KAUI has failed to prosecute her claims before this Board.

ORDER

The Board hereby dismisses the complaint for lack of prosecution, with prejudice.

DATED: Honolulu, Hawaii, December 23, 2003.

HAWAII LABOR RELATIONS BOARD

BRIAN K. NAKAMURA, Chair

CHESTER C. KUNITAKE, Member

KATHLEEN RACUTY-V-MARKRICH, Member

LONA KAUI v. HAWAII TRAN-ZIT SERVICES, INC., et al.
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NOTICE TO EMPLOYER

You are required to post a copy of this notice at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the conference date. Further, you are required to furnish a copy of this notice to a duly recognized representative of the employees at least five working days prior to the conference date.

Copies sent to:

Lona Kau
Nelson H. Kinoshita, Esq.
Leo B. Young, Deputy Attorney General